IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) 17325 OF 2005

Mr.Thomas Gowray ..Appellant

Versus

The Municipal Corporation of Gr.Bombay. ..Respondents

Mr.K.N.Kore for the appellant.

Mr.J.J.Xavier for Respondents.

Coram : R.S.Mohite,J

Date : 9.8.2005.

PC

1. This is an appeal against the Judgment dated 29.6.2005 passed by the City Civil Court, Bombay in L.C.Suit No.7005 of 2000, by which Judgment, the plaintiff's suit for declaration and injunction has been dismissed. It was the case of the plaintiff that he alongwith one Jerome Francis Gowray, Mrs.Gresey Jerome Gowray and Mrs.Gresailda Thomas Gowray were the owners in respect of the property bearing plot no.637 of the Town Planning Scheme III admeasuring about 421 square meters. That a notice dated 10.5.2000 under Section 351 of the BMC Act came to be issued to the plaintiff stating that he had carried out un-authorised construction on the open space on the 3rd floor with brick masonry wall

on the western side of the stair case admeasuring 26’-6" x 25’-0" as per the sketch. The sketch alongwith notice which has been shown to me but which has not been enclosed alongwith appeal memo indicates that the construction was of 9.8 feet. During the trial the plaintiff brought on record by way of evidence the sanctioned plan of the building which was at Exh.16. I have seen the sanctioned plan. As rightly observed by the trial court the offending structure on the open terace is not shown in the sanctioned plan. The present plaintiff had obtained the premises by a Conveyance Deed dated 3.12.1973 (Exh.13). It is mentioned in the Judgment that the Conveyance Deed does not indicate the offending construction on the open terace on the 3rd floor.

2. In the circumstances, I find that the reasoning given by the trial court is cogent and admits of no fault. In the circumstances, there is no substance in the First Appeal. First Appeal is dismissed. It is however, directed that as we are in the midst of rainy season the demolition work may not commence for a period of 4 weeks from today. Certified copy expedited.

(R.S.Mohite,J)